

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:09-CR-140-D

UNITED STATES OF AMERICA

v.

GERARDO RODRIGUEZ,

Defendant.

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**ORDER**

On February 8, 2010, without a plea agreement, Gerardo Rodriguez (“Rodriguez”) pleaded guilty to conspiracy to distribute and possess with the intent to distribute five kilograms or more of cocaine and a quantity of marijuana (count one), and possession with intent to distribute a quantity of marijuana and aiding and abetting (count two). See [D.E. 23, 40]. On July 7, 2010, the court held Rodriguez’s sentencing hearing. See [D.E. 31, 35, 41]. At the hearing, the court adopted the facts set forth in the Presentence Investigation Report (“PSR”). See Fed. R. Crim. P. 32(i)(3)(A)-(B). The court calculated Rodriguez’s total offense level to be 33, his criminal history category to be II, and his advisory guideline range on count one to be 151 to 188 months’ imprisonment. See Resentencing Report. After thoroughly considering all relevant factors under 18 U.S.C. § 3553(a), the court sentenced Rodriguez to 168 months’ imprisonment on count one and 60 months’ imprisonment on count two to run concurrently. See id.; [D.E. 35]. Rodriguez appealed. On April 5, 2011, the United States Court of Appeals for the Fourth Circuit affirmed this court’s judgment. See United States v. Rodriguez, 421 F. App’x 283 (4th Cir. 2011) (per curiam) (unpublished).

On December 22, 2014, Rodriguez moved for a sentence reduction under 18 U.S.C. § 3582(c)(2), U.S.S.G. § 1B1.10, and Amendment 782. See [D.E. 55]. Rodriguez’s new advisory guideline range on count one is 121 to 151 months’ imprisonment, based on a total offense level of

31 and a criminal history category of II. See Resentencing Report. Rodriguez requests a 135-month sentence. See id.; [D.E. 55].

The court has discretion to reduce Rodriguez's sentence under Amendment 782. See, e.g., Dillon v. United States, 560 U.S. 817, 827 (2010); United States v. Peters, 843 F.3d 572, 574 (4th Cir. 2016); United States v. Patterson, 671 F. App'x 105, 105–06 (4th Cir. 2016) (per curiam) (unpublished); United States v. Cole, 618 F. App'x 178, 178–79 (4th Cir. 2015) (per curiam) (unpublished); United States v. Thomas, 546 F. App'x 225, 225–26 (4th Cir. 2013) (per curiam) (unpublished); United States v. Perez, 536 F. App'x 321, 321 (4th Cir. 2013) (per curiam) (unpublished); United States v. Smalls, 720 F.3d 193, 195–97 (4th Cir. 2013); United States v. Mann, 709 F.3d 301, 306–07 (4th Cir. 2013); United States v. Stewart, 595 F.3d 197, 200 (4th Cir. 2010). In deciding whether to reduce Rodriguez's sentence, the court finds that Rodriguez engaged in serious criminal behavior. See PSR ¶¶ 9–15. Moreover, Rodriguez is a recidivist and has convictions for maintaining a vehicle, dwelling, or place for controlled substances, possession of marijuana, trafficking in cocaine by sale (two counts), trafficking in cocaine by delivery, and trafficking in cocaine by possession. See id. ¶¶ 17–18. Rodriguez also has performed poorly on supervision. See id. ¶ 17; Resentencing Report. Rodriguez has taken some positive steps while incarcerated on his federal sentence, but escaped from Federal Prison Camp and was apprehended the same day when he voluntarily returned. See Resentencing Report; cf. Pepper v. United States, 562 U.S. 476, 491 (2011).

Having reviewed the entire record and all relevant policy statements, the court finds that Rodriguez received the sentence that was “sufficient, but not greater than necessary” under 18 U.S.C. § 3553(a). Further reducing Rodriguez's sentence would threaten public safety in light of his serious criminal conduct, serious criminal history, and his serious misconduct while incarcerated. Cf.

U.S.S.G. § 1B1.10, cmt. n.1(B)(ii). Thus, the court denies Rodriguez's motion for reduction of sentence under Amendment 782. See, e.g., Patterson, 671 F. App'x at 105–06; Cole, 618 F. App'x at 178–79; Thomas, 546 F. App'x at 225–26; Perez, 536 F. App'x at 321.

In sum, the court DENIES Rodriguez's motion for reduction of sentence [D.E. 55].

SO ORDERED. This 23 day of May 2018.

  
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JAMES C. DEVER III  
Chief United States District Judge